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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 25, 2000

COMMONWEALTH OF VIRGINIA, ex rel.

ROBERT E. LEE JONES JR.

v.

CASE NO. PUC990157

MCI WORLDCOM NETWORK  
SERVICES OF VIRGINIA, INC.

COMMONWEALTH OF VIRGINIA, ex rel.

JEFFREY D. BARNES

v.

CASE NO. PUC990246

MCI WORLDCOM NETWORK  
SERVICES OF VIRGINIA, INC.

ORDER ON MOTIONS

The Commission has before it several motions and pleadings filed by the parties and Staff in these proceedings.

By Order of February 29, 2000, the Commission granted motions of MCI WorldCom Network Services of Virginia, Inc., ("MCIW") and the Virginia Department of Corrections ("DOC") for an extension of time to file responses to the complaints that were filed initiating these matters. The Order provided for responses to be filed by March 29, 2000, and for replies to the responses to be filed by April 19, 2000.

Motions to dismiss were filed by DOC and MCIW on March 29, 2000, and March 30, 2000, respectively. MCIW also filed on March 30, 2000, a motion for leave to file its response late. MCIW's motion for leave to file its response late will be granted. Both the DOC and MCIW argue the Commission's lack of jurisdiction over this matter and the complainant's lack of standing to bring this action.

On April 13, 2000, and April 17, 2000, respectively, complainants Barnes and Jones filed replies to the motions to dismiss of MCIW and DOC. In their replies, Jones and Barnes argue, among other things, that § 56-234 of the Code of Virginia does not divest the Commission from exercising jurisdiction over this matter and that they have standing to bring this action because they are directly affected by the rates charged by MCIW under the inmate telephone system. Based on the pleadings before us at this time, the motions to dismiss will be denied.

MCIW and DOC request that if their motions to dismiss are not granted they be afforded an additional opportunity to respond more fully to the issues raised in the complaints. We will permit such supplemental responses, and we will further permit the complainants to reply to the supplemental responsive pleadings of MCIW and DOC.<sup>1</sup>

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<sup>1</sup> Jones filed on March 27, 2000, a motion for extension of time to file his reply to MCIW's initial responsive pleading. To the extent we are permitting

Mr. Jones and the Commission Staff have both propounded discovery on MCIW to which MCIW objects. In response to objections from MCIW, the Staff and Mr. Jones have filed pleadings to compel MCIW to answer their respective discovery requests.<sup>2</sup> We find that all of the Staff's discovery requests of March 15, 2000, are significantly material and not unduly burdensome and that MCIW's objections filed April 4, 2000, fail to provide a sufficient basis to deny the Staff's motion to compel. Accordingly, we will direct MCIW to respond fully to the Staff's March 15 discovery. In addition, we will direct MCIW to serve copies of its response to the Staff discovery on the complainants.

We will sustain in part MCIW's objections<sup>3</sup> to Mr. Jones's discovery propounded February 16, 2000. We will not require MCIW to respond to Requests 1, 2, 6, 8, and 9 as we find these requests to be overly broad and not significantly material to the complaint. We will deny MCIW's objections to Requests 3 and 4 as we find those requests are material and appear

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the complainants to reply to the supplemental responses of MCIW and DOC, that motion is granted.

<sup>2</sup> Staff Motion to Compel Responses to Interrogatories and Requests for Production of Documents (filed Apr. 12, 2000); Jones Objection and Response to Objections of MCI WorldCom Network Services of Virginia, Inc., to Complainant's Request for Production of Documents (filed Mar. 27, 2000).

<sup>3</sup> MCIW served it objections on Jones March 13, 2000, and subsequently filed a copy of same with the Commission on April 7, 2000.

reasonably calculated to lead to the discovery of admissible evidence and are not unduly burdensome. MCIW's objection to Request 5 is sustained to the extent the request seeks information that would not be properly included in Request 4. MCIW's objection to Request 6 is sustained as that request is overly broad and does not appear reasonably calculated to lead to the discovery of admissible evidence. MCIW shall respond to Request 7 to the extent that request seeks a copy of the referenced tariff and documents relating to the determination and establishment of the tariffed rates.

MCIW shall serve its responses to Mr. Jones's discovery as directed herein simultaneously with the filing of its supplemental responsive pleading. We note that Mr. Jones has propounded to MCIW a second set of Interrogatories and Request for Production of Documents, dated March 24, 2000. As these requests appear to duplicate the initial discovery propounded by the Staff, we find that our requirement stated above that MCIW serve Jones with a copy of its response to Staff discovery will suffice as its response to this second set of discovery of Mr. Jones. Finally, we encourage the complainants to be mindful that any subsequent discovery sought in this proceeding must be narrowly tailored to ensure that such requests are material to the issues properly before the Commission and are not unduly burdensome on the party against whom discovery is sought.

In response to a February 28, 2000, request from the Office of Attorney General's Division of Consumer Counsel that it be removed from the service list for this proceeding, Mr. Jones filed on March 7, 2000, an objection to the requested removal. Because we find that this proceeding will likely present issues that should be of importance to the Consumer Counsel, we will include the Division on the service list.<sup>4</sup>

Finally, on April 13, 2000, Mr. Barnes filed a motion requesting that his complaint be separated from that of Mr. Jones, asserting that the relief sought in the two complaints are different and that the issues and relief sought by Jones may jeopardize the issues and relief sought by Barnes. It is not apparent to the Commission that the issues in the two complaints are sufficiently distinct or that the nature of the Jones complaint would prejudice the ability of Mr. Barnes to prosecute adequately his complaint so as to disturb the judicial economy achieved by consolidating these two matters. Nevertheless, we will permit Mr. Barnes to offer additional argument in support of his motion at the time he files his reply to the supplemental responses.

NOW THE COMMISSION, having considered the motions and other pleadings before it in these matters, is of the opinion and

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<sup>4</sup> The inclusion of a person on a Commission service list does not make one a party to the proceeding.

finds that: the motions to dismiss should be denied; MCIW and DOC shall be permitted to supplement their pleadings in response to the complaints filed herein, and the complainants shall be permitted an opportunity to reply to such supplemental responses; MCIW's objection to the Staff's discovery should be denied, and the Staff's motion to compel should be granted; and MCIW's objection to Jones's discovery should be granted in part and denied in part. Accordingly,

IT IS ORDERED:

(1) MCIW's motion for leave to file its responsive pleading late is granted.

(2) The motions to dismiss of MCIW and the DOC are denied.

(3) On or before May 10, 2000, MCIW and the DOC may file a response to the complaints supplementing their initial responsive pleadings filed March 30, 2000, and March 29, 2000, respectively; and complainants shall respond to such supplemental responsive pleadings on or before May 31, 2000.

(4) The Commission Staff's motion to compel responses to interrogatories and request for production of documents is granted, and on or before May 10, 2000, MCIW shall serve its complete responses to the Staff discovery on the Staff and shall serve a copy on the complainants.

(5) Consistent with the provisions of this Order, MCIW's objections to Jones's request for production of documents is

sustained in part and otherwise denied, and MCIW shall serve its responses to Jones's discovery simultaneous with the filing of its supplemental responsive pleading on or before May 10, 2000.

(6) The parties shall respond to any subsequent discovery within ten (10) days of service. Except as so modified herein, discovery shall be in accordance with Part VI of the Commissions Rules of Practice and Procedure.

(7) This matter is continued for further orders of the Commission.